

### **REMARKS**

Applicants respectfully request reconsideration and allowance in view of the foregoing amendment and the following remarks. Applicants amend claims 39 and 46 without prejudice or disclaimer.

#### **Rejection of Claims 39 and 46 Under 35 U.S.C. §112**

The Office Action rejects claims 39 and 46 under 35 U.S.C. §112, second paragraph, as being indefinite to particularly point out and distinctly claim the subject matter which the Applicant regards as the invention. Applicants amend claims 39 and 46 to recite “wherein the stored performance content is determined to be out-of-date based on a performance content class of the stored performance content” instead of “wherein each performance content class is determined to be out-of-date differently”. Applicants submit that claims 39 and 46 now resolve the problem of insufficient antecedent basis and are not indefinite under 35 U.S.C. §112, second paragraph. Accordingly, Applicants respectfully request that the rejection be withdrawn.

#### **Rejection of Claims 39**

The Office Action objects to claim 39 because of informalities. Applicants amend claim 39 as suggested in the Office Action and respectfully request that the rejection because of informalities be withdrawn.

#### **Rejection of Claims 39-54 Under 35 U.S.C. §103(a)**

The Office Action rejects claims 39-54 under 35 U.S.C. §103(a) as being unpatentable over Beach et al. (U.S. Patent No. 6,728,713) (“Beach et al.”) in view of Andros et al. (U.S. Patent No. 5,045,850) (“Andros et al.”) and further in view of Greer et al. (U.S. Patent No.

5,978,828) (“Greer et al.”). Applicants submit that the cited references are nonanalogous to the claims and to each other and should not be combined in the manner proposed in the Office Action. However, for the sake of furthering prosecution, Applicants also provide claim amendments reciting the additional limitations of “selecting a process for obtaining the needed performance content from at least one of a plurality of performance transmitters based on global positioning system (GPS) information” and “executing the process for obtaining the needed performance content from the at least one of the plurality of performance transmitters.” The specification provides support for these amendments on page 17, line 14 – page 18, line 21. We turn first to the issue of whether these references are analogous or not.

The examiner must determine what is “analogous prior art” for the purpose of analyzing the obviousness of the subject matter at issue. “Under the correct analysis, any need or problem known in the field of endeavor at the time of the invention and addressed by the patent [or application at issue] can provide a reason for combining the elements in the manner claimed.” *KSR International Co. v. Teleflex Inc.*, 550 U.S. 398, 82 USPQ2d 1385, 1397 (2007). Thus a reference in a field different from that of applicant’s endeavor may be reasonably pertinent if it is one which, because of the matter with which it deals, logically would have commended itself to an inventor’s attention in considering his or her invention as a whole. MPEP 2141.01(a). In this case, the Abstract teaches that the need or problem known in the field is media distribution, such as a radio or television station transmitting songs or movies. Andros et al. is directed to transmitting messages to pagers. Andros et al. would not have logically commended itself to an inventor’s attention because it involves pagers which are incapable of displaying media in any meaningful form. Certainly the pagers at the time of the disclosure of Andros et al. (1989) did not possess the requisite output capability, data storage capability, battery life, processing power, and bandwidth to display media such as songs and movies. One of skill in the art would have

considered the subject matter of the disclosure of Andros et al. as well as its old age and likely discard it as being specific to devices of insufficient ability, i.e. pagers. Pagers are, by and large, relegated to very utilitarian roles such as emergency services. More media-centric applications, such as the one recited in the claims, have evolved to exist on a plethora of other devices, such as set-top boxes, smartphones, PDAs, laptops, netbooks, and others. With such a wide variety of multimedia references, an inventor would not likely closely consider the teachings of Andros et al. because it relates to limited-capacity, non-multimedia devices. For these reasons, Applicants submit that the relied upon references are non-analogous.

Second, Applicants amend claim 39 and 46 to recite “selecting a process for obtaining the needed performance content from at least one of a plurality of performance transmitters based on global positioning system (GPS) information” and “executing the process for obtaining the needed performance content from the at least one of the plurality of performance transmitters.” Neither Beach et al., Andros et al., nor Greer et al. teach obtaining performance content from at least one of a plurality of performance transmitters based on GPS information. In fact, it was not until 8 December 1993 that Les Aspin notified the Secretary of Transportation that the GPS system had achieved initial operational capability. See <http://web.archive.org/web/20031116092811/http://www.navcen.uscg.gov/ftp/gps/ARCHIVES/gpsdoc/IOCLTR.TXT> . Andros et al. was filed in 1989, well before GPS was available. While Greer et al. was filed after the public advent of GPS, Greer et al. is directed to content changes of web pages, which has virtually no direct application to a geographical position. Similarly, Beach et al. is directed to distributing data packets on a network, which also has very little, if any, meaningful application to geographical position. Therefore, Applicants submit that this claim amendment places claims 39 and 46 as well as their dependent claims in condition for allowance and respectfully request that the rejection be withdrawn.

**CONCLUSION**

Having addressed all rejections and objections, Applicants respectfully submit that the subject application is in condition for allowance and a Notice to that effect is earnestly solicited. If necessary, the Commissioner for Patents is authorized to charge or credit the **Novak, Druce & Quigg, LLP, Account No. 14-1437** for any deficiency or overpayment.

Respectfully submitted,

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